

REMARKS

This communication responds to the Office Action mailed on October 25, 2007. Claims 1, 8, 13, 19, 24 and 28 are amended, claims 9 and 14 are canceled, and no claims are added. As a result, claims 1, 3-6, 8, 10-11, 13, 15-17, 19-22 and 24-30 are now pending in this application.

Information Disclosure Statement

The Applicant submitted a Supplemental Information Disclosure Statement and a 1449 Form on October 25, 2007. The Applicant respectfully requests that an initialed copy of the 1449 Form be returned to the Applicant's Representatives to indicate that the cited documents have been considered by the Examiner.

§103 Rejection of the Claims

Claims 1, 8 and 11 were rejected under 35 USC § 103(a) as being unpatentable over Roberts (U.S. 2006/0166619) in view of Belcea (U.S. 2003/0185166). Claims 3 and 4 were also rejected under 35 USC § 103(a) as being unpatentable over Roberts and Belcea in view of Van De Berg (U.S. 5,907,812). Claims 5, 6, 10, 16, 17, 21, 25 and 30 were also rejected under 35 USC § 103(a) as being unpatentable over Roberts and Belcea in view of Kong et al. (U.S. 2004/0192208A1, hereinafter "Kong"). Claims 13, 19, 20, 22, 24, 26 and 27 were also rejected under 35 USC § 103(a) as being unpatentable over Roberts and Belcea in view of Saunders et al. (U.S. 2004/0142696A1, hereinafter "Saunders"). Claims 28 and 29 were also rejected under 35 USC § 103(a) as being unpatentable over Roberts and Saunders and further in view of Banker et al. (U.S. 5,485,221A, hereinafter "Banker").

Applicant does not admit that Roberts, Belcea, VanDeBerg, Kong, Saunders or Banker are prior art, and reserves the right to swear behind these references in the future. And, since a *prima facie* case of obviousness has not been established as required by M.P.E.P. § 2142, Applicant respectfully traverses this rejection under 35 USC § 103(a).

The Examiner has the burden under 35 U.S.C. § 103 to establish a *prima facie* case of obviousness. *In re Fine*, 837 F.2d 1071, 1074, 5 U.S.P.Q.2d (BNA) 1596, 1598 (Fed. Cir. 1988). The M.P.E.P. contains explicit direction to the Examiner in accordance with the *In re Fine* court:

In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d (BNA) 1438 (Fed. Cir. 1991)).

The requirement of a suggestion or motivation to combine references in a *prima facie* case of obviousness is emphasized in the Federal Circuit opinion, *In re Sang Su Lee*, 277 F.3d 1338; 61 U.S.P.Q.2D 1430 (Fed. Cir. 2002), which indicates that the motivation must be supported by evidence in the record.

Applicant has amended independent claims 1 and 8 by adding the limitation “**selecting the group further includes: selecting the center channel to be the same as the control channel with the specified number of channels equal to one**” as recited in previously presented claim 9, which is now canceled. Applicant has also amended independent claims 13, 19, 24 and 28 by adding the limitation “**selecting the first group further includes: selecting only the control channel with a signed extension channel offset of zero**” as recited in original claim 14, which is now canceled. None of Roberts, Belcea, Van De Berg, and Kong, Saunders and Banker disclose any of these two limitations, which are now respectively included in amended independent claims 1, 8, 13, 19, 24 and 28. Thus, even combined, these references do not teach all of the limitations set forth in these amended independent claims. Accordingly, these references do not render amended independent claims 1, 8, 13, 19, 24 and 28 obvious.

The conclusion with respect to independent claims 1, 8, 13, 19, 24 and 28 also applies to claims 3-6, 10-11, 15-17, 20-22, 25-27 and 29-30, since any claim depending from a nonobvious independent claim is also nonobvious. See MPEP § 2143.03.

It is therefore respectfully requested that the rejection of claims 1, 3-6, 8, 10-11, 13, 15-17, 19-22, and 24-30 under 103(a) be reconsidered and withdrawn. Applicant respectfully requests reconsideration and allowance of these claims.

Allowable Subject Matter

Claims 9, 14 and 15 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

To expedite prosecution, the Applicant has rewritten independent claim 8 by adding the limitation of claim 9 and canceled original claim 9, following the suggestion of the Office. The Applicant has also rewritten independent claim 13 by adding the limitation of claim 14 and canceled original claim 14, according to the suggestion of the Office. Accordingly, amended independent claims 8 and 13 are nonobvious and thus patentable. Dependent claims 10-11 and 15-17 are also nonobvious and thus patentable, since any claim depending from a nonobvious independent claim is also nonobvious. See MPEP § 2143.03.

RESERVATION OF RIGHTS

In the interest of clarity and brevity, Applicant may not have addressed every assertion made in the Office Action. Applicant's silence regarding any such assertion does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (210) 308-5677 to facilitate prosecution of this application. If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted by,

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